



# 2016-018

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

January 6, 2016

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Honorable Mickey Haddock  
Mayor, City of Florence  
Post Office Box 98  
Florence, Alabama 35631-0098

Municipalities – Real Property – Contracts –  
Conflicts of Interest – Estates – Lauderdale  
County

Purchase of property by the City of Florence from an estate of which a current employee is a beneficiary could result in a violation of section 11-43-12 of the Code of Alabama. The prohibitions found in section 11-43-12 do not apply to the Lauderdale County Commission. Thus, neither the Lauderdale County Commission, nor a municipal employee, would violate the criminal provisions of section 11-43-12 if the property in question is purchased by the county commission using county funds from an estate that has a municipal employee as a beneficiary.

Dear Mayor Haddock:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Florence.

### QUESTION

Notwithstanding section 11-43-12 of the Code of Alabama or any other law of the State of Alabama, may the City of Florence, a municipal corporation, purchase real property upon which to construct a new animal shelter from an estate of which a current employee is one of five beneficiaries?

FACTS AND ANALYSIS

In your letter of request, you stated the following:

The City of Florence, a class 5 municipality, will use a portion of proceeds from its General Obligation Warrant Series 2013-B, along with funds appropriated to the City of Florence by the Lauderdale County Commission, to construct a new Florence/Lauderdale Animal Control Building. Real estate suitable for such construction has been located within the Florence-Lauderdale Industrial Park. The real estate being considered for this project is presently owned by an estate composed of five beneficiaries. A current employee of the City of Florence is one of the beneficiaries, with the city employee's share of the estate being 12.5 percent. The city employee is not the executor/executrix/principal of the estate. The city has discussed and negotiated the purchase of the real estate with the executor/executrix/principal of the estate. The negotiations have stipulated that the city will have the real estate appraised by an appraiser appropriately licensed by the State of Alabama, with the purchase price of the real estate to be an amount equal to or less than the appraised value of the real estate.

Section 11-43-12 prohibits an alderman, officer, or employee of a municipality from having a direct or indirect interest in any business paid out of the municipal treasury. This provision states as follows:

(a) No alderman or officer or employee of the municipality shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the treasury, nor shall any member of the council or officer of the municipality be surety for any person having a contract, work or business with such municipality for the performance of which a surety may be required.

(b) Any person who violates any of the provisions of this section shall be guilty of a

misdemeanor and, on conviction thereof, shall be fined not less than \$50.00 nor more than \$1,000.00, and may also be sentenced to hard labor for the county for not more than six months.

ALA. CODE § 11-43-12 (2008).

Section 43-2-830 contemplates the devolution of real property of a decedent. This provision states, in pertinent part, as follows:

(a) Upon the death of a person, decedent's real property devolves to the persons to whom it is devised by decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of a testate estate, or in the absence of testamentary disposition, to decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates.

ALA. CODE § 43-2-830 (Supp. 2015).

Based on the plain language of this provision, upon the death of the owner of the real property, that property devolves or passes to heirs of the estate. *Yeager v. Lucy*, 998 So. 2d 460, 464 (Ala. 2008).

Because of the manner in which real property passes to heirs, it is the opinion of this Office that a municipal employee, who is an heir, has a direct interest in the disposition of that property. Although section 11-43-12 may not directly prohibit a contract for the purchase of this property, any contract between the City of Florence and the executor of an estate, where a municipal employee has an interest within the estate and the funds for the purchase will come from the municipal treasury, could result in a violation of the criminal provisions contained within section 11-43-12 of the Code.

In your letter of request, you informed this Office that the contemplated venture is a joint effort with the Lauderdale County Commission. The provisions of section 11-43-12 of the Code do not apply to the Lauderdale County Commission. Thus, neither the Lauderdale County Commission nor the municipal employee/heir would be subject to the criminal penalties of section 11-43-12 if the property in question is purchased with county funds.

CONCLUSION

Purchase of property by the City of Florence from an estate of which a current employee is a beneficiary could result in a violation of section 11-43-12 of the Code. The prohibitions found in section 11-43-12 do not apply to the Lauderdale County Commission. Thus, neither the Lauderdale County Commission, nor a municipal employee, would violate the criminal provisions of section 11-43-12 if the property in question is purchased by the county commission using county funds from an estate that has a municipal employee as a beneficiary.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General

By:

A handwritten signature in black ink, appearing to read "G. Ward Beeson, III".

G. WARD BEESON, III  
Deputy Chief, Opinions Section

LS/MMG  
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